

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H Street, N.W., SUITE 200, WEST TOWER
WASHINGTON, D.C.

NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 1009, IN THE MATTER OF THE INVESTIGATION INTO
AFFILIATED ACTIVITIES, PROMOTIONAL PRACTICES, AND CODE OF
CONDUCT OF REGULATED GAS AND ELECTRIC COMPANIES

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D. C. Official Code Section 2-505,¹ of its intent to adopt Chapter 39, "Affiliate Transactions Code of Conduct" of Title 15, District of Columbia Municipal Regulation ("DCMR") in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*

2. The proposed regulations develop a Code of Conduct for each regulated utility company and non-regulated affiliate. The regulations reflect a number of developments in the energy marketplace, such as the expansion of competition in energy markets within the District of Columbia; allegations of improper conduct between regulated companies and unregulated affiliates related to energy company bankruptcies; and cost allocation issues between regulated and non regulated entities.

CHAPTER 39 AFFILIATE TRANSACTIONS CODE OF CONDUCT

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¹ D.C. Official Code § 2-505 (2006 Supp.).

3900 APPLICABILITY

- 3900.1 This Chapter establishes the Public Service Commission's ("Commission") Code of Conduct between regulated energy utilities and unregulated affiliate service providers.

**3901 PROHIBITION OF FAVORABLE TREATMENT FOR
AFFILIATES**

- 3901.1 Neither an energy utility nor its service affiliate(s) shall represent that any advantage accrues to a customer or others in the use of the energy utility's services as a result of that customer or others dealing with the service affiliate(s).
- 3901.2 Neither an energy utility nor its service affiliate(s) shall represent that the affiliation allows the service affiliate(s) to provide a service superior to that available from other licensed energy suppliers.
- 3901.3 No energy utility shall promote the services of a service affiliate or disparage the services of a competitor of a service affiliate.
- 3901.4 An energy utility shall not condition or tie the provision of regulated utility services to:
- (a) The purchase, lease, or use of any other goods or services offered by the energy utility or its affiliates; or
 - (b) The direct or indirect commitment not to deal with any competing energy supplier.
- 3901.5 An energy utility shall not give preferential treatment to its affiliate(s) or customers of its own affiliate(s) in providing regulated services. With respect to regulated utility services, the energy utility shall treat all similarly situated providers and their customers in the same manner as the energy utility treats the affiliate or the affiliate's customers.
- 3901.6 An energy utility shall process all requests for service by any provider in the same manner and within the same period of time as it processes requests for service from its core service affiliate(s). An energy utility shall keep an annual log of the length of time it takes the energy utility to process each request for service.
- 3901.7 An energy utility shall provide the same information about its distribution and transmission services contemporaneously to all licensed energy providers in a manner that does not favor its core service affiliates.

- 3901.8 An energy utility shall apply all the terms and conditions of its tariff related to delivery of energy services to similarly situated providers in the same manner, without regard to whether the supplier is a core service affiliate.
- 3901.9 An energy utility shall offer the same discounts, rebates, fee waivers, or penalty waivers to all similarly situated non-affiliated suppliers or customers that it may offer its core service affiliate or customers of its affiliate. The energy utility shall make such contemporaneous offers, including an appropriate posting on the energy utility's electronic bulletin board, or by some other appropriate means (e.g. Internet website).
- 3902 LIMITATIONS ON JOINT MARKETING, SPACE, AND SALES FOR SERVICE AFFILIATES**
- 3902.1 Joint promotions, marketing, and advertising between an energy utility and its core service affiliate(s) are prohibited. Joint marketing shall include the sharing of billing materials. As such, an energy utility may not allow a core service affiliate access to space on its billing envelope or the ability to include marketing information inside the billing envelope.
- 3902.2 Joint sales calls shall not be initiated either by an energy utility or its core service affiliate(s). However, when a customer requests a joint sales call, a joint sales call may be conducted. If a customer enters into a contract with a core service affiliate, a joint call relating to that contract may be conducted.
- 3902.3 An energy utility shall not provide sales leads to its core service affiliate(s).
- 3902.4 Marketing/advertising material used by the service affiliate claiming an association with the energy utility shall include a disclaimer that:
- (a) The affiliate supplier is not the same company as the energy company, whose name or logo may be at least partially used;
 - (b) The prices and services of the affiliate supplier are not set by the Commission; and
 - (c) The customer is not required to buy energy or other products and services from the affiliate supplier in order to receive the same quality service from the energy utility.
- 3902.5 An energy utility and its core service affiliate(s) shall operate from physically separate locations to avoid the inadvertent sharing of

information. The core service affiliate(s) shall not share office space owned or used by the energy utility.

- 3902.6 An energy utility shall not ask a customer for consent to provide the customer's name or information to its core service affiliates licensed in the District of Columbia. An energy utility shall refrain from speaking for, or appearing to speak on behalf of, its core service affiliates.

3903 DISCLOSURE OF INFORMATION

- 3903.1. An energy utility shall not disclose any customer-specific information obtained in connection with the provision of regulated utility services except upon informed, written consent of the utility customer.

- 3903.2 Notwithstanding the limitations in 3903.1, customer-specific information may be disclosed for lawful bill collection or credit reporting purposes, pursuant to a subpoena or request by a duly authorized law enforcement official, or pursuant to a lawful request authorized by local or federal law.

- 3903.3 Any information provided by an energy utility to its energy marketing affiliate(s) with respect to its electric or gas system, the marketing or sale of energy to customers or potential customers, or the delivery of energy to or on its system, shall be contemporaneously disclosed to all non-affiliated suppliers or potential non-affiliated suppliers on its system. Disclosure of such information must be published on the energy utility's electronic bulletin board or equivalent mechanism used to communicate with licensed energy providers.

- 3903.4 Notwithstanding the limitations in 3903.3 above, an energy utility may disclose the following information without making the disclosure publicly available:

- (a) Information that is subject to the administration of a contract to supply Standard Offer Service, or to carry out an interconnection agreement;
- (b) Information to a supplier, whether affiliated or non-affiliated, as necessary for the supplier to bill or provide services to its customers; and
- (c) Information with its affiliates to the extent necessary to comply with federal and state laws and regulations, including those relating to financial reporting and corporate governance.

3904 COST ALLOCATION AND ACCOUNTING

- 3904.1 Within four (4) months of the close of the energy utility's fiscal year, an energy utility must file annually a Cost Allocation Manual ("CAM") with the Commission explaining how it will allocate and account for shared services between the energy utility and any affiliate.
- 3904.2 The CAM must include the following:
- (a) An explanation of the corporate organization;
 - (b) A description of each corporate entity, including location, list of officers and the statement of the business of each entity;
 - (c) An explanation and calculation of each of the cost allocation factors used for transfers between and among corporate entities;
 - (d) A listing of each type of cost which is allocated between entities and the factor(s) which is (are) used in the allocation; and
 - (e) A listing of the total amount of each cost allocated to each entity during the annual period.
- 3904.3 When changes occur to the CAM prior to the next annual filing period, the energy utility must file amendment(s) to the CAM as necessary.
- 3904.4 An affiliate and an energy utility must maintain separate books and records that shall be subject to review pursuant to the Public Utility Holding Company Act of 2005 ("PUHCA 2005") by the Commission.
- 3904.5 Commission Staff and the Office of the People's Counsel ("OPC") shall be provided full access pursuant to PUHCA 2005 to the books and records of any affiliate and energy utility that relate to the sharing of costs with the energy utility through an allocation methodology.
- 3904.6 The energy utility and all affiliates to or from which assets included in rate base have been transferred by or to the energy utility and all affiliates that provide services to, or share costs with, the energy utility through any allocation method, must make available for inspection and review by the Commission books relating to the foregoing pursuant to PUHCA 2005 so that the Commission may determine compliance with the Code of Conduct. Books shall be maintained for inspection and review for at least five (5) calendar years. The initiation of an investigation by the Commission shall not shift the energy utility's burden of proving compliance with these rules.

- 3904.7 Biennially, the energy utility shall conduct, at shareholder expense, an audit of its books and the books of any affiliate to ensure compliance with the District's Code of Conduct. The energy utility shall choose an independent auditor (approved by the Commission), and shall notify the Commission of that choice at least sixty (60) days prior to the beginning of the audit.

3905 LOANS AND LOAN GUARANTEES

- 3905.1 Energy utilities shall not provide loans or loan guarantees to their affiliates or to their holding company without prior written approval of the Commission. The general prohibition includes use of utility rate base asset as collateral for any affiliate activity.

- 3905.2 Notwithstanding any provision to the contrary, an energy utility may participate in a cash management or money pool subject to federal regulations of the Securities and Exchange Commission or the Federal Energy Regulatory Commission.

3906 TRANSFER OR SALE OF ASSETS

- 3906.1 Transfers of assets from an energy utility to an affiliate must be recorded at the greater of book cost or market value. Transfers of assets from an affiliate to the energy utility should be at the lesser of book cost or market value. Such asymmetric pricing shall not apply to any transaction resulting from a competitive bidding process.

- 3906.2 The Commission maintains its authority to restrict and mandate use and terms of sale of utility assets of \$50,000 or more.

3907 RESTRICTIONS ON USE OF EMPLOYEES AND EQUIPMENT

- 3907.1 An energy utility shall share only non-operational employees with its core service affiliate.

- 3907.2 An energy utility and a core service affiliate may share the same telecommunications system or computer system, so long as adequate security and system protections are in place to prevent the accessing of information or data of the energy utility by core service affiliates that would be in violation of other provisions of this Chapter.

- 3907.3 An energy utility shall not temporarily assign any employee of the energy utility to a core service affiliate. However, energy utility employees may be temporarily assigned to a non-core service affiliate, provided those energy utility employees are not subsequently transferred to a core service affiliate.

3907.4 For the purposes of this section, a temporary assignment is for a term less than one year.

3908 RING-FENCING

3908.1 Any energy utility owned by a holding company that transfers more than 5 percent of the utility's earnings to a holding company parent, or declares a special or regular cash dividend to the holding company parent, shall notify the Commission in writing no less than 30 days before such action.

3908.2 Energy utilities shall maintain standalone credit and bond ratings separate from their affiliates or holding company interests.

3909 EMERGENCY SUSPENSION

3909.1 The provisions of this Code of Conduct may be suspended during an emergency. Energy utilities subject to the Code of Conduct shall, within 24 hours of the emergency suspension, and every 72 hour period thereafter, notify the Commission of the basis of the emergency that warrants the suspension of the Code of Conduct. The energy utility shall notify the Commission within 24 hours following the expiration of the emergency.

3910 WAIVER

3910.1 An energy utility may petition for a waiver from any section of the DC Regulated Energy Utility Affiliate Transactions Code of Conduct, which may be granted by the Commission upon a showing of good cause.

3911-3998 (Reserved)

3999 DEFINITIONS

3999.1 For the purposes of this chapter:

"Affiliate" means a person who directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has directly or indirectly, any economic interest in another person.

"Asset" means Tangible and Intangible property of an energy utility or other right, entitlement, business opportunity, or other things of value to which an energy utility holds claim that is recorded or should be recorded as a capital expenditure in the energy utility's financial statements. All energy utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered an asset, a service, or supply.

“Asymmetric pricing” means pricing including, but not limited to energy utility assets, services and things of value transferred to an affiliate, is recorded at the greater of book value or market value, with pricing of the same items transferred from the affiliate to the energy utility recorded at the lesser of book cost or market value.

“CAM” or “Cost Allocation Manual” means the manual that explains how the energy utility will allocate and account for shared services between the regulated utility and its affiliates.

“Core service affiliate” means an affiliate that provides energy services including the sale and delivery of electricity or natural gas to District customers.

“Customer” means a purchaser of natural gas or electricity for end use in the District of Columbia. The term excludes an occupant of a building where the owner, lessee, or manager manages the internal distribution system serving the building and supplies natural gas solely to occupants of the building for use by the occupants.

“Emergency” means any of the following, or similar, situations which require any action contrary to this [Code of Conduct]: (a) a natural disaster, including but not limited to a hurricane, tornado, snow storm, earthquake, flood, or land slide that impacts utility service; or (b) any national or state declared state of emergency or condition resulting in federal, state or local government closing its respective offices; or (c) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, disconnection of system elements that could adversely affect utility service or the reliability of the utility’s electric system or natural gas system or the safety of persons or property; or (d) acts of others such as riots, sabotage, acts of terrorism, insurrections, nationalization or wars, which adversely affect utility service or the reliability of the utility’s electric system or natural gas system.

“Energy supplier” means a licensed person including an aggregator, broker, or marketer, who generates energy (natural gas or electricity); sells energy (natural gas or electricity); or purchases, brokers, arranges or markets energy (natural gas or electricity) for sale to customers in the District of Columbia. The term excludes the following: (A) building owners, lessees, or managers who manage the internal distribution system serving such building and who supply energy (natural gas or electricity) solely to the occupants; (B) (I) any energy purchases (natural gas or electricity) for its own use or its subsidiaries or affiliates; or (II) any apartment building or office building manager who aggregates energy (natural gas or electricity) service requirements for his or her buildings, and who does not: (a) take title to the energy (natural gas or electricity); (b) market energy (natural gas or electricity) services to the individually-metered tenants for his or her building; or (c) engage in the resale of energy (natural gas or electricity) services to others; (C) property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and (D) a consolidator.

“Energy utility” means a natural gas corporation or electric company under the jurisdiction of the Commission whose rates, charges, terms and conditions, and the quality of services it provides to customers are regulated by the Commission.

“Non-core service” means any service or activity performed by an affiliate that does not duplicate or replace an essential service provided by the energy utility.

“Non-core service affiliate” means an affiliate that does not provide energy services including the selling and delivery of electricity or natural gas to customers in the District of Columbia.

“Non-operational employees” means employees not directly involved in the purchase and/or generation of energy for use by customers.

“Operational employees” means employees directly involved in the purchase and/or generation of energy for use by customers.

3. Comments on the proposed regulations must be made in writing to Dorothy Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington D.C., 20005. All comments must be received within thirty (30) days of the date of publication of this Notice in the *D.C. Register*. Persons wishing to file reply comments may do so no later than forty-five (45) days of the date of publication of this Notice in the *D.C. Register*. Once the comment period expires, the Commission will take final rulemaking action.